IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ACCU-SPEC ELECTRONIC SERVICES, INC.,	)	
Plaintiff	)	
	)	
v.	)	C.A. NO.: 03-394 E
	)	
CENTRAL TRANSPORT INTERNATIONAL, INC. and LOGISTICS PLUS, INC.,	)	
Defendants	)	

ACCU-SPEC ELECTRONIC SERVICES, INC.'S RESPONSE IN OPPOSITION TO CENTRAL TRANSPORT INTERNATIONAL'S MOTION IN LIMINE TO PRECLUDE EVIDENCE OF SPECIAL CONSEQUENTIAL DAMAGES THAT WERE NOT FORESEEABLE.

I. Facts

Plaintiff Accu-Spec Electronic Services, Inc. ("Accu-Spec"), has filed this lawsuit against defendants Central Transport International, Inc. ("Central Transport") and Logistics Plus, Inc. ("Logistics Plus") seeking to recover monetary damages to an x-ray machine which was being transported by Central Transport between California and Pennsylvania. Accu-Spec has filed this lawsuit under the Carmack Amendment, 49 U.S. C. § 14706.

In the present Motion in Limine, Central Transport asserts that Accu-Spec is not entitled to recover the cost of packing and sending the damaged x-ray machine to England and the expenses to fly an engineer from England to inspect the unit. (Motion in Limine, p. 1). Central Transport's Motion should be denied because such expenses fall within the cost to repair the x-ray machine which constitute general damages, not special damages. Paper Magic Group, Inc. v.

J. B. Hunt Transport, Inc. 318 F.3d 458 (3rd Cir. 2003); Oritani Sav. & Loan Ass'n v. Fidelity & Deposit Co., 744 F. Supp. 1311, 1322 (D.N.J. 1990).

II. Discussion

Central Transport agrees that the Paper Magic opinion sets forth the appropriate rule for decision in this case. (Motion in Limine, p. 4). Paper Magic makes clear that the Carmack Amendment did not alter the common law rule that general damages are those foreseeable to a reasonable person, whereas special damages are those that a carrier did not have a reason to foresee as ordinary, natural consequences of a breach when the contract was made. Paper Magic, 318 F.3d at 461-462. Paper Magic also makes clear that special damages are such damages as recovery for loss of use, lost future profits or additional labor incurred. Id. at 462.

In contrast, the 3rd Circuit stated that general damages are calculated by the difference in the invoice price of the shipment and the best evidence of the value on the date of delivery. Id. As in any other action for contract damages, the buyer/consignee of a shipment is ordinarily under a duty to accept the shipment from the carrier, and a shipper/consignor is ordinarily under a duty to mitigate its loss. Id. Because plaintiffs have a general duty to mitigate damages, costs to carry out this duty can be expected to occur in every case. Therefore, costs incurred to mitigate damages are classified as general damages, not consequential damages. Oritani Sav. & Loan Ass'n., 744 F. Supp. at 1322.

The expenses to which Central Transport objects, specifically the cost of shipping the x-ray machine to England for repair and the cost of flying an engineer from England to inspect the x-ray machine prior to shipment, are those expenses reasonably incurred when Accu-Spec mitigated its loss. The value of the x-ray machine upon delivery by Central Transport was zero because of the extent of the damage. However, Accu-Spec mitigated its damages by sending the machine back to England for repair. Testimony will show that shipping the x-ray machine back to England was the only method of obtaining repairs for the machine.

Central Transport does not argue that it could not foresee that the x-ray machine would be shipped somewhere for repair, and presumably Central Transport would not object if the x-ray machine were shipped to California. Central Transport does not object to the type of expense incurred, it simply objects to the amount the expense. Because the type of expense which Accu-Spec incurred in mitigating its damages was reasonably foreseeable to Central Transport, Accu-Spec is not barred from recovering these damages at trial.

III. Conclusion

For the foregoing reasons, plaintiff Accu-Spec Electronic Services, Inc. respectfully requests this Honorable Court to deny Central Transport International, Inc.'s Motion in Limine to Preclude Evidence of Special or Consequential Damages that were not foreseeable.

Respectfully submitted,

/s/Thomas A. Pendleton
W. Patrick Delaney
Pennsylvania Bar I.D. No. 23956
Thomas A. Pendleton
Pennsylvania Bar I.D. No. 69118
MacDONALD, ILLIG, JONES & BRITTON LLP
100 State Street, Suite 700
Erie, Pennsylvania 16507-1459
(814) 870-7600
FAX (814) 454-4647

Attorneys for Plaintiff
Accu-Spec Electronic Services, Inc.

913872